

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LILLIAN CASTILLO,

Civil Action

Plaintiff,

Case No.:

-against-

NOTICE OF REMOVAL

WHOLE FOODS MARKET GROUP, INC. and
190-220 THIRD STREET STORE BROOKLYN
NY, LLC,

Defendants.

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Defendants, WHOLE FOODS MARKET GROUP, INC. and 190-220 THIRD STREET
STORE BROOKLYN NY, LLC, by their attorneys, FISHMAN McINTYRE LEVINE
SAMANSKY P.C., respectfully petition the United States District Court, Eastern District of New
York, upon information and belief, as follows:

1. This case was originally commenced on or about April 16, 2021 in the Supreme
Court of the State of New York, County of Kings. The suit is identified in the Supreme Court as
“*Lillian Castillo v. Whole Foods Market Group, Inc. and 190-220 Third Street Store Brooklyn NY,
LLC*”, Index No. 509028/2021. A true copy of plaintiff’s Summons and Verified Complaint is
cumulatively annexed hereto as **Exhibit A**.

2. Defendants first received notice of the suit when service was effectuated upon CT
Corporation, their registered agent for service of process in New York, on or about April 19, 2021.
(See **Exhibit B** hereto).

3. The grounds for removal are based on the original jurisdiction of this Court under 28
U.S.C. § 1332, which allows this Court to hear matters based on diversity of citizenship of the
parties.

4. In plaintiff’s Complaint, plaintiff does not specify a monetary amount of damages
claimed. Rather, plaintiff claims damages of a non-monetary amount as a result of alleged personal

“injuries” sustained in connection with the alleged occurrence. See **Exhibit A**, para. 34.

5. However, on or about October 29, 2021, by way of response to defendants’ demand for a statement of damages pursuant to C.P.L.R. § 3017, plaintiff has “demand[ed] judgment against the defendants in the sum of Twenty-Five Million (\$25,000,000.00) dollars”. A true copy of plaintiff’s “Ad Damnum” response, dated October 29, 2021, is annexed hereto as **Exhibit C**.

6. Therefore, this Notice of Removal is being filed within 30 days of plaintiff’s “Ad Damnum” response to defendants’ demand for a statement of damages.

7. Based upon the foregoing, there can be no doubt that the amount in controversy herein exceeds \$75,000.00, exclusive of interest and costs.

8. Plaintiff is a resident of the State of New York, County of Kings (See **Exhibit A** hereto, Summons at page 1 and Complaint at para. 1).

9. On or about May 4, 2021, defendants served on plaintiff’s counsel a Request to Admit, namely that as of the date the cause of action arose (i.e., the date of plaintiff’s alleged accident), plaintiff was a citizen of the State of New York. (See Request to Admit annexed hereto as **Exhibit D**). Plaintiff did not respond to defendants’ Request to Admit within the 30-day time permitted by C.P.L.R. § 3123(a). Thus, defendants’ demands concerning plaintiff being a citizen of the State of New York at the time the cause of action arose are deemed “admitted”. See C.P.L.R. § 3123(a).

10. Defendant, Whole Foods Market Group, Inc., is a foreign corporation, incorporated in the State of Delaware and having its principal place of business in Austin, Texas (see **Exhibit E**).

11. Defendant, 190-220 Third Street Store Brooklyn NY, LLC, is a foreign limited liability company, incorporated in the State of Delaware (see **Exhibit F**). Moreover, defendant 190-220 Third Street Store Brooklyn NY, LLC, has its principal office in Austin, Texas (see

Exhibit G). Further, 190-220 Third Street Store Brooklyn NY, LLC is the sole member of GBD Properties, Inc., a Delaware corporation with its principal place of business in Austin, Texas. Id.

12. As touched on above, plaintiff is a citizen of the State of New York. Indeed, per plaintiff's Complaint, plaintiff admits to being a resident of the State of New York. Defendant, Whole Foods Market Group, Inc., is a foreign corporation, incorporated in a state other than New York, and having its principal place of business in a state other than New York. Defendant, 190-220 Third Street Store Brooklyn NY, LLC, is a foreign limited liability company, incorporated in a state other than New York, and having its principal office in a state other than New York. As such, this action is between plaintiff, a citizen of one state, and defendants, corporate citizens of two other states.

13. Based upon the foregoing, diversity of citizenship exists.

14. Written notice of the filing of this Notice of Removal has been given to all parties in accordance with 28 U.S.C. §1446 (d), as evidenced in the annexed Certificate of Service.

WHEREFORE Petitioners, WHOLE FOODS MARKET GROUP, INC. and 190-220 THIRD STREET STORE BROOKLYN NY, LLC, defendants in the action described herein now pending the Supreme Court of the State of New York, County of Kings, under Index No. 509028/2021, prays that this action be removed therefrom to this Honorable Court.

Dated: New York, New York
November 24, 2021

Yours etc.,



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